



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 21, 1998

Ms. Patricia Blackshear
Assistant City Attorney
City of College Station
P.O. Box 9960
1101 Texas Avenue
College Station, Texas 77842

OR98-2464

Dear Ms. Blackshear:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID #118869

The City of College Station received a request for information covering the total number of parking/traffic citations given by each of the 3 code enforcement officers. Most important, the number given by each in the "Northgate" Subdivision by a Randal Frankson within the last few months, i.e. Apr '98 to Present.

You contend that this information is excepted from public disclosure pursuant to section 552.103(a) of the Government Code. In support of your contention, you state that the request covers the geographic area in which the citation to the requestor was issued and the same officer who issued the citation to the requestor. You also submit a representative sample of recently issued parking tickets and a memorandum compiled by Officer Frankson containing some of the requested information.¹ You state that the City of College Station believes that all of the information requested is exempt from disclosure pursuant to Government Code § 552.103 (a).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted).

We have considered the exception you claim and have reviewed the documents at issue. When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.² Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation to which the governmental body is a party is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). In this instance, the City of College Station has met its burden of showing that the litigation is pending and that the requested information relates to that litigation. Therefore, you may withhold the requested information at this time. In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.103(a) was intended to prevent the use of the Open Records Act as a method of avoiding the rules of discovery in litigation.³ Attorney General Opinion JM-1048 at 4 (1989). The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 at 3 (1990). Although section 552.103(a) gives the attorney for a governmental body discretion to determine whether section 552.103(a) should be claimed, that determination is subject to review by the attorney general. Open Records Decision Nos. 551 at 5 (1990), 511 at 3 (1988).

²Section 552.103(a) excepts from required public disclosure information:

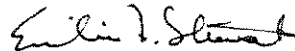
- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

³The Open Records Act is not a substitute for the discovery process under the Texas Rules of Civil Procedure. *See* Attorney General Opinion JM-1048 (1989) at 3 ("the fundamental purposes of the Open Records Act and of civil discovery provisions differ"); Open Records Decision No. 551 at 3-4 (1990) (discussion of relation of Open Records Act to discovery process).

You have also requested our opinion of whether the City of College Station was required to compile information that was not in the form in which it was requested. You note that the Fire Department keeps records similar to the requested information. A governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1982). However, a governmental body need not prepare new information in response to a request. For additional guidance on this issue, please see OFFICE OF THE ATTORNEY GENERAL, 1998 TEXAS OPEN RECORDS ACT HANDBOOK, § IVB at 18 and § IVD (1998) and the authorities cited there.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 118869

Enclosures: Submitted documents
OFFICE OF THE ATTORNEY GENERAL, 1998 TEXAS OPEN RECORDS ACT
HANDBOOK, § IVB and § IVD (1998).

cc: Ms. Shannon Schunicht
309-B First Street
College Station, Texas 77840
(w/o enclosures)